

it is ordered that Executive Order 9301 of February 9, 1943 [8 F.R. 1825] (formerly set out as note under this section), establishing a minimum wartime workweek of forty-eight hours, be, and it is hereby, revoked.

HARRY S TRUMAN.

DEFINITION OF "ADMINISTRATOR"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

§ 208. Wage orders in American Samoa

(a) Congressional policy; recommendation of wage rate by industry committee

The policy of this chapter with respect to industries or enterprises in American Samoa engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c)¹ of this title. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in American Samoa engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein, and who but for section 206(a)(3) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title. Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed by such a Committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Investigation of industry condition by industry committee; matters considered

Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the

committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(a)(3) of this title, unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

(c) Classifications within industry; recommendation of wage rate

The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classification should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

- (1) competitive conditions as affected by transportation, living, and production costs;
- (2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and
- (3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) Report by industry committee; publication in Federal Register

The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.

(e) Orders

Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.

¹ See References in Text note below.

(f) Due notice of hearings by publication in Federal Register

Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons.

(June 25, 1938, ch. 676, § 8, 52 Stat. 1064; Oct. 26, 1949, ch. 736, § 8, 63 Stat. 915; Aug. 12, 1955, ch. 867, §§ 4, 5(b)–(e), 69 Stat. 711, 712; Pub. L. 85–750, Aug. 25, 1958, 72 Stat. 844; Pub. L. 87–30, § 7, May 5, 1961, 75 Stat. 70; Pub. L. 93–259, § 5(c)(1), (d), Apr. 8, 1974, 88 Stat. 58; Pub. L. 95–151, § 2(d)(3), Nov. 1, 1977, 91 Stat. 1246; Pub. L. 101–157, § 4(c), Nov. 17, 1989, 103 Stat. 940; Pub. L. 101–583, § 1, Nov. 15, 1990, 104 Stat. 2871.)

REFERENCES IN TEXT

Section 206(c) of this title, referred to in subsec. (a), was repealed by Pub. L. 104–188, title II, § 2104(c), Aug. 20, 1996, 110 Stat. 1929.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–583, which directed the substitution of “unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions” for “unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage” in “section 8(b) (29 U.S.C. 208(b))”, was executed by making the substitution in section 8(b) of the Fair Labor Standards Act of 1938, act June 25, 1938, ch. 676, which is classified to subsec. (b) of this section, to reflect the probable intent of Congress.

1989—Pub. L. 101–157, § 4(c)(5), substituted “American Samoa” for “Puerto Rico and the Virgin Islands” in section catchline.

Subsec. (a). Pub. L. 101–157, § 4(c), substituted “American Samoa engaged” for “Puerto Rico and the Virgin Islands engaged”, struck out “The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee—

“(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who but for section 206(c) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title, and

“(2) may, from time to time, recommend increases in the incremental increases authorized by section 206(c)(2) of this title.”

after “section 206(c) of this title.”, substituted “American Samoa engaged” for “Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged” and inserted “, and who but for section 206(a)(3) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title”.

Subsec. (b). Pub. L. 101–157, § 4(c)(4), substituted “American Samoa a competitive” for “Puerto Rico or in the Virgin Islands a competitive”, “American Samoa; except” for “Puerto Rico and the Virgin Islands; except”, and “section 206(a)(3) of this title” for “section 206(c) of this title”.

1977—Subsec. (a). Pub. L. 95–151 inserted provisions relating to appointment of industry committees by the Secretary and functions of such industry committees.

1974—Subsec. (a). Pub. L. 93–259, § 5(d)(1), (2), substituted in first sentence “the minimum wage rate which would apply in each such industry under para-

graph (1) or (5) of section 206(a) of this title but for section 206(c) of this title” for “the minimum wage prescribed in paragraph (1) of section 206(a) of this title in each such industry” and in third sentence “the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title” for “the minimum wage rate prescribed in paragraph (1) of section 206(a) of this title”.

Subsec. (b). Pub. L. 93–259, § 5(c)(1), required committee to recommend minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(c) of this title, unless industry is unable to pay that wage as established by substantial documentary evidence or in case of employees of public agencies other appropriate information in the record.

Subsec. (c). Pub. L. 93–259, § 5(d)(3), substituted “in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)” for “prescribed in paragraph (1) of section 206(a) of this title”.

1961—Subsec. (a). Pub. L. 87–30 inserted “or enterprises” after “industries” in first sentence and “or in any enterprise engaged in commerce or in the production of goods for commerce” after “production of goods for commerce” in second sentence.

1958—Subsec. (a). Pub. L. 85–750 provided for biennial instead of an annual review of rates and for additional review, in Secretary’s discretion, during any biennial period.

1955—Subsec. (a). Act Aug. 12, 1955, § 4, required review of minimum wage rates at least once each fiscal year.

Subsec. (b). Act Aug. 12, 1955, § 5(b), permitted industry committee or any authorized subcommittee to hear witnesses and receive evidence only after due notice.

Subsec. (c). Act Aug. 12, 1955, § 5(c), struck out provisions which applied to Administrator in determining classifications and minimum wage rates.

Subsec. (d). Act Aug. 12, 1955, § 5(d), struck out provisions which required hearings to be held on recommendations of industry committee, and inserted provisions requiring publication of recommendations and providing that such recommendations should take effect 15 days after date of publication.

Subsec. (e). Act Aug. 12, 1955, § 5(e), struck out provisions which required due notice of orders by publication in Federal Register and by other means as Administrator deemed reasonably calculated to give general notice to interested persons.

1949—Subsec. (a). Act Oct. 26, 1949, stated policy of chapter with regard to minimum wage rate of industries in Puerto Rico and Virgin Islands and limited application of section to such industries.

Subsec. (b). Act Oct. 26, 1949, required an industry committee in fixing minimum wage rates not to give a competitive advantage to industries in Puerto Rico and Virgin Islands over United States industries.

Subsec. (c). Act Oct. 26, 1949, struck out “for any industry” before “shall recommend” and substituted “that prescribed in paragraph (1) of section 206(a) of this title” for “40 cents an hour” within parenthesis in first sentence.

Subsec. (d). Act Oct. 26, 1949, reenacted subsec. (d) without change.

Subsecs. (e) to (g). Act Oct. 26, 1949, struck out subsec. (e) and redesignated subsecs. (f) and (g) as (e) and (f), respectively.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961,

except as otherwise provided, see section 14 of Pub. L. 87-30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that the amendment made by that section is effective July 1, 1956.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

ORDERS, REGULATIONS, INTERPRETATIONS OR AGREEMENTS PRIOR TO 1949 AMENDMENTS

Section 16(c) of act Oct. 26, 1949, provided that: "Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended [this chapter], on the effective date of this Act [ninety days from Oct. 26, 1949], shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act."

WAGE ORDERS ISSUED PRIOR TO JUNE 26, 1940, IN PUERTO RICO OR THE VIRGIN ISLANDS

Joint Res. June 26, 1940, ch. 432, §3(d), 54 Stat. 616, provided as follows: "No wage orders issued by the Administrator pursuant to the recommendations of an industry committee made prior to the enactment of this joint resolution pursuant to section 8 (this section) of the Fair Labor Standards Act of 1938 shall after such enactment be applicable with respect to any employees engaged in commerce or in the production of goods for commerce in Puerto Rico or the Virgin Islands."

DEFINITION OF "ADMINISTRATOR"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

DEFINITION OF "SECRETARY"

The term "Secretary" as meaning the Secretary of Labor, see section 6 of act Aug. 12, 1955, set out as a note under section 204 of this title.

§ 209. Attendance of witnesses

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

(June 25, 1938, ch. 676, §9, 52 Stat. 1065; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095.)

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by this section in Secretary of Labor and Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

"Secretary of Labor" substituted in text for "Chief of the Children's Bureau" by 1946 Reorg. Plan No. 2. See Transfer of Functions note set out under section 203 of this title.

DEFINITION OF "ADMINISTRATOR"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

§ 210. Court review of wage orders in Puerto Rico and the Virgin Islands

(a) Any person aggrieved by an order of the Secretary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds